



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 21 2006

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Cert. No. 7004-1160-0004-8430-7544

In Reply Refer to:
EPA File No. 11R-05-R6

Myra Felder
Unlimited Hauling & Demolition
P.O. Box 6458
1148 Northwestern Ave.
Austin, TX 78702

RE: REJECTION OF ADMINISTRATIVE COMPLAINT

Dear Ms. Felder:

This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is rejecting your administrative complaint dated June 30, 2005. Your complaint states that W. L. Hailey & Company, Inc. (W. L. Hailey), the primary contractor for a public works project for the City of Austin, Texas, subcontracted with your company, Unlimited Hauling & Demolition (UHD), for work on the Shoal Creek Wastewater Improvement: 29th to 34th Street Tunnel project. You allege that W. L. Hailey discriminated against UHD based on race and sex (gender) because you are an African-American, female business owner, in violation of Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, EPA's nondiscrimination regulations, found at 40 C.F.R. Part 7, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (CWA). Specifically, you allege that UHD was subject to larger automobile and workers' compensation insurance requirements than normal, and that UHD has not been used on the project because UHD would not lower the agreed upon contract price, at the request of W. L. Hailey representatives.

Under EPA's nondiscrimination regulations, a recipient of EPA assistance may not discriminate on the basis of race, color, national origin, sex, or handicap. In addition, recipients may not discriminate on the basis of sex in any program or activity receiving EPA assistance under the CWA. Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing.

Second, it must describe alleged discriminatory acts that violate EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, or sex). Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Fourth, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

For reasons listed below, OCR must reject your complaint for investigation. The complaint is in writing and describes an alleged discriminatory act based on race and sex. However, issues pertaining to EPA financial assistance status are discussed below.

Complaint Allegations

1. W. L. Hailey intentionally discriminated against UHD by requiring them to have more automobile and workers' compensation insurance than what is regularly required because the owner is an African-American female.

EPA's nondiscrimination regulations define "EPA assistance" as "any grant or cooperative agreement, loan, contract (*other than a procurement contract* or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance" [emphasis added]. 40 C.F.R. § 7.25. Here, EPA financial assistance was provided to the City of Austin, which then contracted with W.L. Hailey via a procurement contract to perform specific work on the Shoal Creek Wastewater Improvement Project. The procurement contract broke the assistance link between EPA and W. L. Hailey, therefore W. L. Hailey is not considered an EPA recipient nor an EPA sub-recipient. Since W. L. Hailey is not considered a recipient of EPA financial assistance, OCR cannot accept this allegation for investigation.

As stated earlier, a complaint must be filed within 180 calendar days of the alleged discriminatory act. According to the information submitted with your complaint, the alleged discrimination act occurred "during the employment of my contract." While this allegation cannot be accepted because it does not name an EPA recipient, questions also exist on the timeliness of this allegation.

2. W. L. Hailey intentionally discriminated against UHD by releasing UHD of all its contract obligations on April 22, 2005, when UHD, at the request of W. L. Hailey representatives, would not lower the agreed upon contract price.

As explained above, W. L. Hailey received a procurement contract and is not considered a recipient nor a sub-recipient of EPA financial assistance. Therefore, OCR cannot accept this allegation for investigation.

If you have any questions about this letter, please contact Tom Walker of my staff by telephone at (202) 343-9680, by e-mail at Walker.Tom@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington D.C., 20460-1000.

Sincerely,



Karen D. Higginbotham
Director

Enclosure

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